Filed 11/20/08 In re J.V. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.V. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. J.V., Defendant and Appellant.	G040296 (Super. Ct. Nos. DP015656 & DP015657) O P I N I O N

Appeal from orders of the Superior Court of Orange County, James Patrick Marion, Judge. Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

* * *

J.V. (father) appeals from the juvenile court's order placing his children in long-term foster care. He argues the court lacked the statutory authority to terminate mother's reunification services at the dispositional hearing on a subsequent petition. He also claims the court lacked statutory authority to order long-term foster care at a combined disposition/six-month review hearing. For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

In July 2007, authorities placed father's 14-year-old son and 12-year-old daughter into protective custody after father was arrested and jailed for sexually abusing (Pen. Code, § 288, subd. (a)) a friend's 13-year-old daughter. In September 2007, Orange County Social Services Agency (SSA) placed the children with their godparents, G.P. and J.P., where they remained at the time of the orders at issue in this appeal.

The children's mother resides in Mexico. The children reported mother, who had eight children by several fathers, physically abused them and left them for long stretches with elderly and infirm grandparents. SSA telephoned mother at a pay phone in Mexico in late September 2007. She requested the appointment of counsel and the return of her children.

At a combined jurisdictional and dispositional hearing in November 2007, the parents, including mother through counsel, submitted on SSA's reports and the court found the allegations of SSA's amended petition true. The court approved and adopted SSA's case and visitation plan of family reunification. It set a six-month review for April 28, 2008.

In December 2007, SSA learned father had sexually abused his daughter, who was approximately six months pregnant with his child. SSA filed a subsequent petition (Welf. & Inst. Code, § 342; all statutory citations are to this code unless noted)[1] based on the new allegations. The court terminated visitation and set a jurisdictional hearing on the section 342 petition. SSA's report in advance of the hearing recommended denial of reunification services for father (§ 361.5, subd. (b)(6)) and services for mother.

At the February 28, 2008 hearing, the parties submitted on the facts contained in SSA's reports and the court found the allegations of the section 342 petition true. The court denied father reunification services. (§ 361.5, subd. (b)(6).) Counsel for SSA, mother, and the children stipulated to advance the six-month review hearing, originally scheduled for April 28, and to find the children unlikely to be adopted with no available legal guardian, and to order a permanent plan for long-term foster care. Mother's lawyer had not spoken with his client about the stipulation, but agreed to it because SSA could not effectively assist with the children's immigration status until they were permanently placed, and counsel desired to "accelerate a process that . . . is going to take place by midsummer anyhow . . . ." Father objected there was no "legal mechanism at this point to get to" long-term foster care and therefore the court's order constituted an "unlawful disposition," explaining mother would have to file a written waiver of services

[1] Section 342 provides: "In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations. [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section."

before the court could proceed. (§ 361.5, subd. (b)(14).) The juvenile court left the stipulated order intact and father now appeals.

II

DISCUSSION

A. *Father Lacks Standing to Attack the Order Terminating Mother's Reunification Services*

Father argues the juvenile court erred when it terminated mother's reunification services at the dispositional hearing because the six-month review hearing had not yet taken place and mother did not fall within any of the bypass provisions (§ 361.5, subd. (b)) for denial of reunification services. Father lacks standing to raise this issue.

Generally an appellant may not urge errors that affect only another party who does not appeal. (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734 [aggrieved party is one whose interest is injuriously affected by the judgment]; *In re Joshua M.* (1997) 56 Cal.App.4th 801, 807; Code Civ. Proc., § 902.) A parent therefore lacks standing to raise issues on appeal that do not affect his or her interests. (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261; see *In re Gary P.* (1995) 40 Cal.App.4th 875, 876.)

In *Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, the court held a de facto parent who had no right to reunification services did not have standing to object to the court's denial of reunification services to the parent. The court stated: "In order to question the services offered or the conduct of the proceedings, one must have standing. [¶] Without standing, there is no actual or justiciable controversy, and courts will not entertain such cases. [Citation.] 'Typically, . . . the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted.' [Citation.] In

other words, whether one has standing in a particular case generally revolves around the question whether that person has rights that may suffer some injury, actual or threatened. . . . [¶] . . . [¶] [A]s stepparent or de facto parent, the person has the right to appeal certain issues. However, because [he does not have] a right to reunification services, there is no standing to challenge the failure of the court to order such services." (*Id.* at pp. 751-752.)

Father's reliance on *In re Catherine H.* (2002) 102 Cal.App.4th 1284 (*Catherine H.*) misses the mark. In *Catherine H.*, the grandmother became permanent legal guardian of her granddaughter because of the mother's mental illness. The social services agency subsequently petitioned to remove the child based on the grandmother's failure to supervise and protect her grandchild. The juvenile court ordered unmonitored visitation for the grandmother, but restricted the mother to monitored visits. The mother sought custody and asked the juvenile court to set a contested dispositional hearing. The juvenile court denied both requests.

The appellate court reversed, concluding the juvenile court should have granted mother's request for a contested hearing. The court noted that generally, when the juvenile court removes a child from a parent or guardian's custody, it must consider placing that child with any noncustodial parent who requests the placement. (§ 361.2, subd. (a).) The court rejected the agency's position section 361.2, subdivision (a), applied only to a parent who was entitled to custody and not one whose right of custody had been supplanted by a guardianship.

The court also responded to the agency's argument the mother lacked standing because under section 728, subdivision (a), only the social services agency, the child, or the guardian may move to modify or terminate a guardianship previously

established under the Probate Code. The court concluded the *mother* was not seeking to modify or terminate the guardianship. Rather, the agency sought to modify the guardianship by removing the child from the guardian's custody. The modification necessitated a change in placement and the mother merely sought to be heard on the question of placement, and argue the child, once removed, should be placed with her rather than in long-term foster care. The court noted section 728 required notice to the parent of a motion to modify or terminate the guardianship unless the parent had relinquished the child for adoption or the child had been declared free from the parent's custody and control and "in all other cases, the parent presumably has standing to be heard on the motion." (*Catherine H., supra*, 102 Cal.App.4th at p. 1290.)

Here, the juvenile court did not deny father his right to attend the hearing and to offer evidence and argument concerning the proper disposition of his child. (§ 293, subd. (d); Cal. Rules of Court, rule 5.530.) But his right to participate in the juvenile court concerning an appropriate disposition for his children does not entitle him to raise issues on appeal that do not affect him. Unlike the mother in *Catherine H.*, father has not demonstrated the court's order terminating further reunification services for mother aggrieved his interests.

Father asserts he has standing to complain of the alleged error because his interests were aligned with mother's. Mother received notice of the hearing and counsel represented mother's interests in her absence. Counsel stipulated to terminating services and ordering long-term foster care because he determined this served his client's interest. Father's objection to this course of action demonstrates his interests did not align with mother's.

Father also contends the court's order affected his interests because he would have been in a stronger position to obtain visitation with his son during a reunification period. Visitation is an essential component of a reunification plan. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) To maintain ties between the parent and the child, visitation must be ordered as frequently as possible, consistent with the well-being of the child. (§ 362.1, subd. (a)(1)(A); *In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) Where reunification services are denied however, section 361.5, subdivision (f), provides the juvenile court with discretion to permit or deny visitation, unless it finds visitation would be detrimental to the child, in which case it must deny visitation. (*In re J.N.* (2006) 138 Cal.App.4th 450, 458-459.)

Nothing in the record supports father's argument his effort to visit his son was harmed when the court accelerated termination of reunification services for mother. Any prejudicial effect is merely speculative. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1000.) Moreover, father did not seek visitation with his son and the order appealed from does not relate to this issue. Father acknowledges the juvenile court left open the possibility of visitation once the boy's therapist and court appointed special advocate gathered more information.

Because we conclude father does not have standing to object to the order terminating mother's reunification services, we do not reach his contention the court lacked the legal authority to do so.

B. *The Court Had Authority to Order Long-Term Foster Care at the February 2008 Hearing*

Father also contends the juvenile court erred when it ordered long-term foster care at the section 342 dispositional hearing. Father contends "[i]n consolidating the dispositional hearing, six-month review hearing and apparently truncated permanency

hearing into one hearing," the juvenile court failed to perform the analysis required by section 366.26. In other words, the court selected long-term foster care, the least preferred permanent plan (see § 366.26, subd. (b)), without learning whether the foster parents would be willing to adopt the children or care for them under a plan of legal guardianship. The Legislature has recognized that where a child is not a proper subject for adoption and no one is willing to accept legal guardianship, the court may order a long-term foster placement at the permanency hearing. (§ 366.21, subd. (g)(3).) No evidence at the dispositional/permanency hearing suggested the foster parents were willing to consider adoption or guardianship at that time. Consequently, the juvenile court did not err in ordering long-term foster placement

Finally, we note subsequent events have mooted father's complaints concerning any error in ordering long-term foster care at the February hearing. The juvenile court file reflects the godparents now intend to adopt the children, and on August 8, 2008, the court set a section 366.26 hearing for December 5, 2008.

III

DISPOSITION

The orders of the juvenile court are affirmed.

ARONSON, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.